REMARKS

Reconsideration and withdrawal of the rejections of the application are requested in view of the amendments and remarks presented herein, which place the application into condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1, 7, and 9 are pending in this application. Claims 1 and 7 are amended without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

The amendment to claim 1 is to clarify the claimed ssDNA molecule. The amendment to claim 7 is to clarify the variants or mutants of the claimed invention, and is supported, for instance, on page 1 and on page 12 of the specification as originally filed. No new matter is added.

It is submitted that the claims are patentably distinct over the prior art and that these claim are and were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. THE REJECTION UNDER 35 U.S.C. § 102 IS OVERCOME

Claim 1 was rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent Application Publication No. 2001/0053519 ("Fodor et al."). Claims 1, 7, and 9 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,672,500 ("Litwack et al."). These rejections are traversed and will be addressed concurrently.

The Office Action contended that Fodor et al. teaches an array comprising all possible 10mer sequences, and that this necessarily includes all possible 10mer sequences complementary to the ssDNA molecules of parts (i) and (ii), as recited in part (iii) of claim 1. The Office Action noted that the claim does not explicitly set forth any particular size limitation for the complementary ssDNA sequence of part (iii).

In addition, the Office Action alleged that Litwack et al. relates to a polypeptide and nucleic acid sequence of an enzyme involved in apoptosis designated as "Mch2." The Office

Action contended that part of the sequence of Mch2 is found in the sequence of FIG. 1, and that the activation of apoptosis is a characteristic of tubulysins.

In response, Applicants initially point out that "[a] rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." *In re Buszard* 504 F.3d 1364, 1366 (Fed. Cir. 2007) (citing *In re Paulsen,* 30 F.3d 1475, 1478-79 (Fed. Cir. 1994); *Karsten Mfg. Corp. v. Cleveland Golf Co.,* 242 F.3d 1376, 1383 (Fed. Cir. 2001) ("Invalidity on the ground of 'anticipation' requires lack of novelty of the invention as claimed . . . that is, all of the elements and limitations of the claim must be shown in a single prior reference, arranged as in the claim.")). With this in consideration, Applicants assert that the present rejections under Section 102 fail to stand, as neither Fodor et al. nor Litwack et al. teach each and every limitation of the instant claims.

Applicants draw attention to the instant claims, wherein claim 1 recites an "ssDNA molecule selected from the following group: (i) an ssDNA molecule consisting of the sequence of FIG. 1; (ii) an ssDNA molecule which is 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, or about 100% homologous to an ssDNA molecule according to (i) in respect of its number of nucleotides and its nucleotide sequence but which differs by at least one nucleotide from the ssDNA molecule according to (i) in respect of its number of nucleotides and/or its nucleotide sequence; and (iii) an ssDNA molecule **consisting of** a sequence which is complementary to the sequence of an ssDNA molecule according to (i) or (ii)." Neither cited reference teaches an ssDNA molecule **consisting** of the sequence of FIG. 1. Moreover, neither cited reference teaches an ssDNA molecule which is 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, or about 100% homologous to an ssDNA molecule according to (i) in respect of its number of nucleotides **and** its nucleotide sequence but which differs by at least one nucleotide from the ssDNA molecule according to (i) in respect of its number of nucleotides and/or its nucleotide sequence. Finally, neither cited reference teaches an ssDNA molecule **consisting of** a sequence which is complementary to the sequence of an ssDNA molecule according to (i) or (ii). Rather, Fodor et al. relates to 10mer sequences, and Litwack et al. relates to peptide Mch2, which does not comprise a sequence according to (i), (ii), or (iii) of claim 1. Therefore, the cited references fail to anticipate the invention of instant claim 1, as well as claims 7 and 9 which depend therefrom.

In addition, Applicants note that claim 7 herein recites "[v]ariants or mutants which result from a substitution, insertion or deletion of nucleotides or from an inversion of nucleotide

segments of an ssDNA molecule according to claim 1, those variants and mutants encoding enzyme variants or enzyme mutants for the production of secondary substance(s) having properties characteristic of tubulysins, wherein the properties characteristic of tubulysins are a cytostatic or antimitotic action." Litwack et al. does not teach or suggest the variant or mutant of claim 7, as Litwack et al. does not disclose that the peptide, Mch2, has a cytostatic or antimitotic action as recited in claim 7. Hence, Litwack et al., to reiterate, does not anticipate claim 7.

Therefore, Applicants assert that neither Fodor et al. nor Litwack et al. anticipates the claimed invention. Accordingly, Applicants request reconsideration and withdrawal of the rejection under Section 102.

CONCLUSION

Applicants believe that the application is in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By: 

Ronald R. Santucci
Reg. No. 28,988
Tel: (212) 588-0800
Fax: (212) 588-0500